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Supreme Court, U.S.
FILED
MAY 10 2005
OFFICE OF THE CLERK

No. 04-1318

In the Supreme Court of the United States

STATE OF MONTANA,

Petitioner,

v.

TANYA MARIE ANYAN,
JAY CLEVELAND, AND TROY KLEIN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of the State of Montana

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PETITIONER'S REPLY BRIEF

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Petitioner State of Montana respectfully submits the following brief in reply to Respondents' brief in opposition to the petition for writ of certiorari.

Petitioner seeks this Court's review of the Montana Supreme Court's interpretation and application of Richards v. Wisconsin, 520 U.S. 385 (1997). The state appellate court concluded that the officers who entered Respondents' house to serve a search warrant for a clandestine methamphetamine laboratory did not have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by allowing the destruction of evidence. The appellate court reversed the trial court's finding of reasonable suspicion and suppressed the evidence of the meth lab seized during the search.

Officer Chris Nichols of the Thompson Falls Police Department was the lead investigator and made the decision to utilize the SWAT teams that assisted with the search and made the no-knock entry at issue here. Petitioner's statement of the case therefore focuses on the facts that Officer Nichols knew or reasonably believed at the time the search warrant was executed. In their brief in opposition Respondents assert that the petition's statement is based on facts not included in the record before the Montana Supreme Court. (Brief in Opp'n at 13-15.) This assertion is patently false, and this Court should not be confused or

misled by Respondents' misrepresentation of the state court record.

Respondents' complaint concerns the affidavits of Officer Nichols and Sergeant Bardwell, discussed at page 5 of the petition and included in the petition's appendix. Respondents claim that the affidavits were not part of the record before the trial court and the state appellate court, that the information in the affidavits was not presented to the state appellate court during the appeal, and that this Court should therefore disregard the facts presented in Petitioner's statement of the case.

Contrary to Respondents' assertion, the affidavit of Sergeant Bardwell, dated November 6, 2000, was admitted into evidence during the consolidated evidentiary hearing as Exhibit C, along with an earlier affidavit that the officer had executed at the request of defense counsel. (Hr'g Tr. at 47.) In addition, Sergeant Bardwell was examined about both affidavits at the hearing. With respect to Officer Nichols' affidavit, the Montana Supreme Court expressly considered and rejected Respondents' off-record contention when it was made in a motion to strike portions of the State's brief on appeal. Respondents have inexplicably failed to advise this Court of the Montana Supreme Court's order denying their motion to strike and allowing the affidavit of Officer Nichols to remain part of the record on appeal for evidentiary purposes. The order of the Montana Supreme Court, dated September 9, 2003, is attached as an appendix to this brief.

The order is self-explanatory and needs little elaboration. In the proceedings before the Montana Supreme Court the State's brief on appeal relied in part upon Officer Nichols' affidavit and deposition testimony to set forth the facts relevant to the officers' justification for the no-knock entry. Respondents filed a motion to strike portions of the State's brief, particularly the brief's references to Officer Nichols' information about the criminal backgrounds of Troy Klein and other occupants and visitors at the house. Respondents contended that since Officer Nichols' affidavit was not separately offered and admitted as an exhibit at the consolidated evidentiary hearing on Respondents' suppression motions, the State was not entitled to refer in its brief to information in the affidavit.

The Montana Supreme Court denied the motion to strike and expressly rejected Respondents' argument that Officer Nichols' affidavit could not be considered as part of the record in the appeal. The state appellate court noted that the affidavit was filed in the trial court proceedings with the State's responses to the suppression motions, and that Officer Nichols was cross-examined about the affidavit during his deposition. Since Respondents had the opportunity to examine Officer Nichols about the affidavit and stipulated to the admission of his deposition, the substance of the affidavit was properly before the state appellate court as part of the record on appeal.

In summary, there is no legitimate dispute about the evidence that was before the trial court and the

Montana Supreme Court as the state courts considered the propriety of the no-knock entry. Petitioner's statement of the case is fully supported by the record in the state court proceedings. Information from Officer Nichols' affidavit was presented and argued to the Montana Supreme Court, and the state appellate court referred to the information in its opinion.

Petitioner is not asking this Court to consider and resolve any claims of erroneous state court factual findings. Instead, Petitioner asks this Court to review the appropriateness, under the Fourth Amendment, of the "zero plus zero" analysis that the Montana Supreme Court utilized in its consideration of the undisputed facts and circumstances relevant to the no-knock entry.

While Respondents, in opposing a grant of certiorari, may properly choose to focus their own statement of the case upon evidence that they believe is supportive of the Montana Supreme Court's decision, they should not be free to misrepresent or obfuscate the evidentiary basis for Petitioner's recitation of the relevant facts. This Court should not be dissuaded from reviewing this case by reason of Respondents' misleading assertions about the record in the state court proceedings.

For the reasons set forth in the petition, Petitioner requests that this Court grant the petition for writ of certiorari and reverse the state appellate court's judgment.

Respectfully submitted,

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May 2005